RECENT CASE NOTES

ADMIRALTY—MARITIME LIENS—NO LIEN ATTACHES WHERE SUPPLIES ARE FURNISHED TO OWNER OF FLEET.—The libellant company sold coal to a corporation owning a fleet of vessels and delivered it at the corporation's bins, from which it was taken from time to time to supply the vessels and also the corporation's factories. The understanding was that the law would afford a lien on the vessels for the purchase price of the coal. Thereafter the coal company libelled twelve of the steamers, asserting maritime liens for the value of either all the coal or of such parts of it as had been used by the libelled vessels respectively. *Held,* that there was no maritime lien, as the coal was not furnished to the vessels by the libellant but by the fleet owner. *Piedmont & George's Creek Coal Co. v. Seaboard Fisheries Co.* (1920, U. S.) 41 Sup. Ct. 1.

The principal element in a maritime lien on another's property is the creditor's power to cause the thing to be sold in order to have the debt paid out of the price. See 2 Jones, *Liens* (3d ed. 1914) 922; NOTES (1915) 15 COL. L. REV. 343. There has been confusion in the law as to when a materialman could enforce such a lien for repairs, supplies, or necessaries furnished to a vessel. Fitz-Henry Smith, Jr., *The Confusion in the Law Relating to Materialmen's Liens on Vessels* (1908) 21 HARV. L. REV. 332. Congress cleared away much of this confusion and overcame the evil results of several early decisions by statute in 1910. 36 U. S. Stat. at L. 604, U. S. Comp. St. 1916, secs. 7783-7787. This act does not define what is meant by "furnishing repairs, etc. . . . to a vessel." See Fitz-Henry Smith Jr., *New Federal Statute Relating to Liens on Vessels* (1911) 24 HARV. L. REV. 182, 200. The better view appears to be that a lien does not attach "unless the goods are actually put on board the ship, or else are brought within the immediate presence or control" of the master. *The Vigilancia* (1893, S. D. N. Y.) 58 Fed. 698; *The Geisha* (1912, D. D, Mass.) 200 Fed. 865. The mere fact that the delivery is made under a contract with the owner for supplying a fleet of vessels does not in itself prevent the acquiring of a maritime lien if the preceding requirement is met. In such cases, however, the lien does not operate against the fleet as a whole, but only against the separate vessels to the extent to which each has been served. *Astor Trust Co. v. White* (1917, C. C. A. 4th) 241 Fed. 57, L. R. A. 1917 E, 526, note; *The Alligator* (1908, C. C. A. 3d) 161 Fed. 37; Hughes, *Admiralty* (2d ed. 1920) 106. This requirement may be met by forwarding the supplies to a place indicated for the vessel by the order of one in authority. *The Yankee* (1916, C. C. A. 3d) 233 Fed. 919. If the supplies are furnished to the owner, the fact that they are subsequently used on his vessels will not of itself create a lien. This arises, if at all, at the time the supplies were furnished by the libellant and not from what may have happened subsequently. *The Cora P. White* (1917, D. D, N. J.) 243 Fed. 246. The decision in the principal case expresses very clearly, with abundant citations, what appears to be the generally accepted view.

ARMY AND NAVY—JURISDICTION OF COURTS-MARTIAL—CONSTITUTIONALITY OF SECOND ARTICLE OF WAR—END OF WAR.—The petitioners had been sentenced to dishonorable discharge from the army and to confinement in the United States Disciplinary Barracks. After execution of the dishonorable discharge and while in confinement, they were, on November 4, 1918, placed on trial before a general court-martial, charged with murder. On November 25, 1918, they were found guilty, after which they were sentenced to imprisonment in the United States penitentiary. They sought release on habeas corpus, contending that the

court-martial had no jurisdiction to try them on a charge of murder, because they were not at the time of the offense or of the trial members of the land or naval forces and because the trial occurred in time of peace. *Held,* that the district court correctly dismissed the petition. *Kahn v. Anderson* (Jan. 31, 1921) U. S. Sup. Ct. Oct. Term, 1920, No. 421.

The enactment which authorized the establishment of the military prisons at Rock Island and Fort Leavenworth made all persons confined therein amenable to trial by courts-martial, under the rules and articles of war, for offenses committed during confinement. U. S. Rev. St. sec. 1361. The Act of June 18, 1898, provided that soldiers sentenced to dishonorable discharge and confinement should be subject to the laws relating to the administration of military justice until discharged from such confinement. 30 Stat. at L. 484. The second article of war, as contained in the Act of June 3, 1916, subjected to the articles of war "all persons under sentence adjudged by courts-martial." 39 Stat. at L. 208. Colonel Winthrop, the leading American authority upon military law, was of the opinion that such enactments could not be constitutionally construed to apply to offenses committed by soldiers whose sentences to dishonorable discharge had been executed. He argued that such soldiers had ceased to be part of the land or naval forces and were therefore within the protection of the Fifth Amendment. 1 Winthrop, *Military Law* (1st ed. 1886) 110, 121-129. His argument did not find support either with the Attorney General or with the federal District Courts. It was met by two answers: first, that the military prison is a part of the military establishment and subject to military jurisdiction, so that an offense committed therein is a case arising in the land forces; second, that the statute necessarily limits the power of a court-martial to sever the connection of a convicted soldier with the army. Notwithstanding the execution of the sentence, he still retains his military status. *Ex parte Wildman* (1876, D. C. D. Kans.) Fed. Cas. 17653a; *In re Craig* (1895, C. C. D. Kans.) 70 Fed. 969; 16 Op. Atty. Gen. 292. The Supreme Court, in a dictum, had assumed the constitutionality of the provision as applied to military prisoners. *Carter v. McClaughry* (1902) 183 U. S. 365, 383, 22 Sup. Ct. 181, 188. In the instant case it summarily dismisses the claim of unconstitutionality by referring to the above cases, saying that "the principles upon which they rest adequately demonstrate the unsubstantial character of the contention." As to the contention that the trial occurred "in time of peace," the court held that the phrase did not contemplate "a mere cessation of hostilities, but peace in the complete sense, officially proclaimed." See *Hamilton v. Kentucky Distilleries Co.* (1919) 251 U. S. 146, 40 Sup. Ct. 106; (1919) 29 YALE LAW JOURNAL, 113.

EQUITY—CANCELLATION OF INSTRUMENTS—EFFECT OF THE MAXIM OF "CLEAN HANDS" ON INFANT'S RIGHT TO RELIEF.—The plaintiff, a moving picture actress domiciled in California, entered into contracts in New York with the defendants, New York corporations, for services to be performed in New York and California. Under the law of New York she was an infant but under the law of California she was of age. Before the expiration of these contracts she represented to the Keeney Corporation that she was free to accept employment and contracted with it for her exclusive services. The defendants refused to release her and notified the Keeney Corporation of their claim. The plaintiff filed a bill to have the original contract cancelled and to enjoin the defendants from interfering with her employment by others. *Held,* that equity would not give affirmative relief to one coming into court with unclean hands to "repudiate her pledged word of honor," even though she were only morally bound. *Carmen v. Fox Film Corporation and William Fox Vaudeville Company.* (Nov. 10, 1920) U. S. C. C. A. 2d, Oct. Term. 1920, No. 29.

It is well settled that equity will not aid one who has acted in bad faith or